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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PATRICIA ANN DAU,

Plaintiff,

v.

WAL-MART STORES, INC.; ROE
MAINTENANCE COMPANY; DOES 1-20
and ROE BUSINESS ENTITIES 1-20,
inclusive,

Defendants.

Case No.: 2:14-cv-01598-JCM-CWH

**DEFENDANT'S [PROPOSED]
DISCOVERY PLAN AND
SCHEDULING ORDER
SUBMITTED IN COMPLIANCE WITH
LR 26-1(e)**

**SPECIAL SCHEDULING REVIEW
REQUESTED**

Pursuant to Local Rule 26-1(e), the parties submit their proposed Discovery Plan and Scheduling Order.

1. **Meeting:** Pursuant to FRCP Rule 26(f), a meeting was held on October 28, 2014, and was attended telephonically by Breane Stryker of PHILLIPS SPALLAS & ANGSTADT LLC, on behalf of Defendant Wal-Mart Stores, Inc., and Seth Little of RICHARD HARRIS LAW FIRM, on behalf of Plaintiff Patricia Ann Dau.

2. **Pre-Discovery Disclosures:** Pursuant to FRCP Rule 26(a)(1), the parties will make their pre-discovery disclosures, including but not limited to, any Computation(s) of Damages required pursuant to FRCP 26(a)(i)(A)(iii), by November 11, 2014.

1 3. **Areas of Discovery**: The parties agree that the areas of discovery should include, but not
2 be limited to: all claims and defenses allowed pursuant to the Federal Rules of Civil Procedure.

3 4. **Discovery Plan**: The parties propose the following discovery plan:

4 A. **Discovery Cut-off Date(s)**: LR 26-1(e)(1) provides that “unless otherwise
5 ordered, discovery periods longer than one hundred eighty (180) days from the date the first
6 defendant answers or appears will require special scheduling review.”
7

8 The parties agree that a longer discovery period is appropriate in this case, and therefore,
9 request special scheduling review by the Court, per Local Rule 26-1(d). Both parties acknowledge
10 the difficulties associated with coordinating witness depositions and expert discovery, including a
11 site inspection, during the holiday period of November and December.
12

13 Therefore, the parties propose, subject to this Court’s consent, that 210 days be allowed for
14 discovery in this matter. If granted, discovery will be commenced and completed no later than
15 March 20, 2015. This date is 210 days after the date of Defendant’s filing of its first appearance.
16 The parties represent to this Court that this request for additional time is made in good faith and not
17 for the purpose of delay, and that, if such additional time is granted, all reasonable efforts will be
18 made by the parties to complete discovery in that time.
19

20 B. **Amending the Pleadings and Adding Parties**: The parties shall have until
21 December 20, 2014, to file any motions to amend the pleadings to add parties. This is 90 days
22 before the discovery cut-off date.

23 C. **FRCP 26(a)(2) Disclosure of Experts**: Disclosure of experts shall proceed
24 according to FRCP Rule 26(a)(2) and LR 26-1(e)(3) as follows: The disclosure of experts and their
25 reports shall occur on or before January 19, 2015. The disclosure of rebuttal experts and their
26 reports shall occur on or before February 18, 2015. These deadlines are 60 and 30 days before the
27 discovery cut-off date, respectively.
28

1 D. **Interim Status Report:** The parties shall file their interim status report by
2 January 19, 2015, 60 days before the discovery cut-off date, as required by LR 26-3.

3 E. **Dispositive Motions:** The parties shall have until April 19, 2015, to file
4 dispositive motions. This is 30 days after the discovery cut-off date, as required by LR 26-1(e)(4).

5 F. **Pre-Trial Order:** The parties will prepare a Consolidated Pre-Trial Order on or
6 before May 19, 2015, which is not more than 30 days after the date set for filing dispositive motions
7 in the case, as required by LR 26-1(e)(5). This deadline will be suspended if dispositive motions are
8 timely filed until 30 days after the decision of the dispositive motions or until further order of the
9 Court. The disclosure required by FRCP Rule 26(a)(3), and objections thereto, shall be made in the
10 pre-trial order.
11

12 G. **Court Conferences:** If the Court has questions regarding the dates proposed by
13 the parties, the parties request a conference with the Court before entry of the Scheduling Order. If
14 the Court does not have questions, the parties do not request a conference with the Court.
15

16 H. **Extensions or Modifications of the Discovery Plan and Scheduling Order:**
17 Local Rule 26-4 governs modifications or extensions of this Discovery Plan and Scheduling Order.
18 Any stipulation or motion to extend a specific discovery deadline must be made not later than 21
19 days before the subject deadline. Any stipulation or motion to extend the discovery period itself
20 must be made not later than February 27, 2015, 21 days before the discovery cut-off date.
21

22 I. **Authorizations:** It is agreed that Plaintiff PATRICIA ANN DAU, will
23 complete, sign, and serve on Defendant **within fourteen (14) days of receipt thereof**, the following
24 forms provided to Plaintiff's counsel by Defense counsel: (1) HIPAA Compliant Authorization for
25 the Release of Patient Information Pursuant to 45 CFR 164.508; (2) Social Security Administration
26 Release (if applicable to Plaintiff's claims); (3) IRS Release (if applicable to Plaintiff's claims); and
27 (4) Employment Release (if applicable to Plaintiff's claims).
28

1 J. **Format of Discovery:** Pursuant to the electronic discovery amendments to the
2 Federal Rules of Civil Procedure effective December 1, 2006, the parties addressed the e-discovery
3 issues pertaining to the format of discovery at the Rule 26(f) conference. The parties do not
4 anticipate discovery of native files or metadata at this time, but each party reserves the right to make
5 a showing for the need of such electronic data as discovery progresses.
6

7 5. **Area In Dispute -- Authorizations:** The parties have been unable to come to an
8 agreement concerning the language regarding an independent medical examination of Plaintiff by
9 one of Defendant's doctors, to be determined. Pursuant to Local Rule 26-1(d), when there is a
10 disagreement, "as to the form or contents of the discovery plan, a statement of each party's position
11 on each point in dispute is required." Below is each party's position regarding the inclusion of a
12 provision regarding an Independent Medical Examination in the Discovery Plan and Scheduling
13 Order.
14

15 A. **Defendant's Position:** Defendant's position is that Plaintiff shall agree to
16 undergo an Independent Medical Examination and that this shall be included in the
17 Discovery Plan and Scheduling Order.

- 18 1. Plaintiff claims she has "sustained major injuries to her back, neck,
19 and hip' necessitating ongoing physical therapy treatment, radiological
20 studies, and consultation with a spine surgeon." FRCP Rule 35 allows a
21 Court to order that a party whose mental or physical condition is in
22 controversy to submit to a physical or mental examination by a suitably
23 licensed or certified examiner.
24
- 25 2. The language that was originally included in the Order and agreed to
26 by the parties did not provide Defendant with sufficient authority to ensure
27 Plaintiff's compliance.
28

1 3. The Parties attempted to meet and confer in regards to this issue, but
2 were unable to come to an agreement regarding the language.

3 4. Defendant, therefore, proposes the following be included in the
4 Discovery Plan and Scheduling Order:

5 1. "The parties agree that Plaintiff will undergo an independent
6 medical examination, performed by Defendant's doctor, to be
7 determined."
8

9 B. **Plaintiff's Position:** Plaintiff's counsel opposes the inclusion of the above
10 language as he does not agree that an Independent Medical Examination is a
11 necessary component of a Discovery Plan and Scheduling Order. Despite the
12 severity of Plaintiff's alleged injuries, Plaintiff's counsel has agreed to only the
13 following language: "Defendant reserves the right to have Plaintiff undergo an
14 independent medical examination, performed by Defendant's doctor(s), should
15 Plaintiff be recommended for surgery."
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1 Respectfully submitted,

2 DATED this 14th day of November, 2014.

3 **PHILLIPS, SPALLAS & ANGSTADT**

4 */s/ Breane P. Stryker*

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10 (702) 938-1510

11 *Attorneys for Defendant*
12 *Wal-Mart Stores, Inc.*

13 **IT IS SO ORDERED:**

14
15 **UNITED STATES MAGISTRATE JUDGE**

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17 **DATED:** _____
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